

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CLIFFORD MCCLAIN,

Petitioner,

v.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:17-cv-00753-RFB-NJK

ORDER

Clifford McClain has now filed a third amended 28 U.S.C. § 2254 habeas corpus petition (ECF No. 48).

IT IS THEREFORE ORDERED that Respondents file a response to the third amended petition, including potentially by motion to dismiss, within **90** days of the date of this order, with any requests for relief by Petitioner by motion otherwise being subject to the normal briefing schedule under the local rules. Any response filed shall comply with the remaining provisions below, which are entered pursuant to Habeas Rule 5.

IT IS FURTHER ORDERED that any procedural defenses raised by Respondents in this case be raised together in a single consolidated motion to dismiss. In other words, the Court does not wish to address any procedural defenses raised herein either *in seriatum* fashion in multiple successive motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to dismiss will be subject to potential waiver. Respondents should not file a response in this case that consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit.

1 If Respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they
2 should do so within the single motion to dismiss not in the answer; and (b) they should
3 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
4 forth in Cassett v. Stewart, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
5 procedural defenses, including exhaustion, should be included with the merits in an
6 answer. All procedural defenses, including exhaustion, instead must be raised by
7 motion to dismiss.

8 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, Respondents
9 specifically cite to and address the applicable state court written decision and state
10 court record materials, if any, regarding each claim within the response as to that claim.

11 **IT IS FURTHER ORDERED** that Petitioner has **45 days** from service of the
12 answer, motion to dismiss, or other response to file a reply or opposition, with any other
13 requests for relief by Respondents by motion otherwise being subject to the normal
14 briefing schedule under the local rules.

15 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
16 herein by either Petitioner or Respondents be filed with a separate index of exhibits
17 identifying the exhibits by number. The CM/ECF attachments that are filed further are
18 to be identified by the number of the exhibit in the attachment.

19 **IT IS FURTHER ORDERED** that the parties SEND courtesy copies of all exhibits
20 in this case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed to the
21 attention of "Staff Attorney" on the outside of the mailing address label. Additionally, in
22 the future, all parties must provide courtesy copies of any additional exhibits submitted
23 to the court in this case, in the manner described above.

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25 DATED: August 3, 2020.

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28 RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE